Nos. 13 & 14 Orig.

Brf. of Attorney General (Conrad & Pradt) for Petitioner.

Filed Dec 24, 1900.

Office Supreme Court U.S.
FILED
DEC 24 1900
JAMES H. MCKENNEY
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 13, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

No. 14, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

BRIEF FOR PETITIONER.

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BRIEF FOR PETITIONER.

STATEMENT.

These are applications for writs of mandamus to the Court of Claims to proceed with and determine motions for new trials. The motions are made upon the same conditions of facts, which are set up in the petitions.

Thomas Kirby (No. 13 original) and Cranford & Hoffman (No. 14 original) brought suits in the Court of Claims,

pursuant to the provisions of the act of Congress entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved June 16, 1880 (c. 243, 21 Stat., 284). The suit of Kirby was dismissed for want of prosecution. The suit of Cranford & Hoffman proceeded to trial, and judgment was rendered for claimants for the sum of $7,385.60, as due and payable January 1, 1876. This judgment, principal and interest, was paid in 1885 at the Treasury.

Thereafter Congress duly passed an act, approved February 13, 1895 (c. 87, 28 Stat., 664), as follows:

> That in the adjudication of claims brought under the provisions of the act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the board of public works; and whenever said rates have not been allowed the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause.

The said claimants filed their several motions for new trials, which were allowed; and such proceedings were had thereon that the Court of Claims gave judgments in favor of the claimants and against your petitioners for amounts due and payable January 1, 1876. No new

trials under said act after these latter judgments were prayed; no appeals from said judgments were taken in proper time.

The judgments, principal *and interest*, were paid, as under the act of 1880.

After these judgments and satisfactions, other suits of a like nature by other claimants against your petitioner were tried under the said act of February 13, 1895, and judgments rendered exactly similar to the judgments above mentioned; but from these judgments appeals were taken by the defendant, your petitioner, to the Supreme Court. The question raised and argued and decided was as to the correctness of the allowance of interest upon the amounts found due from your petitioner. This court determined that no interest was due upon such amounts until after the passage of the act of February 13, 1895. (*District of Columbia* v. *Johnson*, 165 U. S., 330.)

Subsequently, and within two years from the date of the above-mentioned judgments against your petitioner in favor of said claimants, your petitioner filed motions for new trials under section 1088 of the Revised Statutes, which provides:

> The Court of Claims, at any time while any claim is pending before it, or an appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is

made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

These motions were, each, as follows:

MOTION FOR A NEW TRIAL.

Now comes defendant, The District of Columbia, by the Attorney-General of the United States, and moves the court to set aside the judgment entered in this cause on the 10th day of June, A. D. 1895 (the other, the 18th day of November, A. D. 1895), and to grant a new trial herein, for the following reasons, viz:

I.

For error in the court, in this: That the court gave judgment for claimant as due and payable January 1, 1876, the effect of which was to give interest upon the amount of said judgment from that date, whereby great wrong and injustice was done to the United States and the District of Columbia.

II.

For error in the court in adjudging that the amounts allowed became due and payable before the granting of the judgment herein, whereby wrong and injustice was done to the United States and the District of Columbia.

J. E. DODGE,
Assistant Attorney-General.

After argument and consideration the said Court of Claims refused to entertain said motions, and dismissed the same by an indorsement on the motion, as follows: "Overruled, the court having no jurisdiction to con-

sider the same. The statute under which the suit was brought requires motions for new trial to be made within twenty days from the rendition of the judgment, as follows: 'That motions for new trials shall be made by either party within twenty days after the rendition of any judgment. (Act of June 16, 1880, 21 Stat. L., 285.)'"

Your petitioner on May 14, 1900, applied for leave to file petitions for writs of mandamus requiring the Court of Claims to hear and determine said motions; which leave was granted on May 28, 1900, and a rule to show cause was directed to said judges. To the rule the judges have made the following return, which is the same, *mutatis mutandis*, in each case, and is as stated in the petition:

Supreme Court of the United States.

October Term, 1900.

No. 14, Original.

Ex parte: In the matter of the District of Columbia, petitioner.

RETURN TO RULE.

Court of Claims.

In the matter of the petition of the District of Columbia for a writ of mandamus in the case of Cranford and Hoffman *v.* said District, decided on the 18th day of November, 1895, in which a judgment was rendered against said District on said day.

To the Supreme Court of the United States:

The chief justice and judges of the Court of Claims, in answer to a rule of the Supreme Court, made on the 28th day of May, 1900, to show cause why a writ of mandamus should not issue as prayed for, answering, say: That on the 25th day of February, 1897, the petitioner filed a motion for a new trial, as set forth in the petition herein, and on the 19th day of March, 1900, the matter then having been brought to the notice of the Court, after argument and consideration by the court, said motion was overruled by the court in an indorsement on the same, as follows, to wit:

"Overruled: The court having no jurisdiction to to consider the same. The statute under which the suit was brought requires motions for new trials to be made within twenty days from the rendition of the judgment, as follows: 'That motions for new trials shall be made by either party within twenty days after the rendition of any judgment. (Act of June 16, 1880; 21 Stat. L., 285.)'"

In testimony whereof the chief justice and judges have hereunto set their hands this 30th day of November, A. D. 1900.

[SEAL.]

CHARLES C. NOTT.
LAWRENCE WELDON.
STANTON J. PEELLE.
CHARLES B. HOWRY.

(Indorsed): Supreme Court U. S., October term, 1900. Term No. 14, Original. Ex parte: In the matter of the District of Columbia, petitioner. Return to rule. Filed Dec. 5, 1900.

The question squarely presented by these pleadings is, whether the law of section 1088, Revised Statutes, as to these cases, has been abrogated and repealed by the proviso in section 4 of the act of June 16, 1880.

ARGUMENT.

By the organic act of February 24, 1855 (C. 122, 10 St., 612), and the amendatory act of March 3, 1863 (C. 92, 12 St., 765), carried into section 1070, Revised Statutes, it is provided that the Court of Claims "shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law."

By the same act of February 24, 1855, section 9, carried into section 1087, Revised Statutes, it is provided:

> When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Rules of court have been promulgated, from time to time, regulating the granting of new trials under this statute.

In neither the jurisdictional statute nor the rules is any mention made of a new trial on the part of the United States. But, under the plenary power to establish rules for the regulation of practice, and to exercise such powers as are necessary to carry into effect the powers granted to it by law, the court could grant a new trial upon the application of the Government for any of the grounds so amply covered by the statute. And where there was made manifest, in proper time, say at the term at which the judgment was rendered, a mistake